

REMARKS

Claims 1-8, 10-11, 14-15 and 20-27 are currently pending in this application.

Claims 23-26 have been rejected under 35 USC §112, first paragraph, because the specification does not provide enablement for a method or system for imaging without the use of all proprietary image formats. Applicants respectfully disagree. Page 2 of the specification discloses the problems related to the use of proprietary image formats. At the bottom of the page, the application recites that the present invention addresses the deficiencies of proprietary and standard formats. Further, the claim is only directed to the exclusion of a proprietary image format *conversion* routine. Consequently, the described embodiment wherein XML format is used is an enabling embodiment of incorporating new user data format requirements into the processing data without requiring a manufacturer's proprietary image format conversion routine.

Claims 1-8, 10-11, 14-15 and 20-27 have been rejected under 35 USC §103(a) as being unpatentable over Ashburn (US Patent No. 5,742,060) in view of the cited Wang reference. The Examiner's basis for this rejection is that "[b]ecause Ashburn teaches processing the image data in a format that is compatible with *existing* imaging cameras, one of ordinary skill in the art would be motivated to use the conventional XML format as disclosed by Wang with the invention as disclosed by Ashburn in order to increase the universality of the image data so that it can be more easily viewed/or used from one imager to another." (emphasis added). For the following reasons, Applicants respectfully disagree and request reconsideration of these claims.

First, the Examiner has put forth a nicely crafted argument, however such an argument is not based on the applicable law. The construction of the basis for rejection, as cited above, is instead based on impermissible hindsight. Ashburn does not provide the motivation to be combined with the Wang reference. Instead, a person of ordinary skill in the art is required to look for an answer to a problem not even discussed in Ashburn. This is the very essence of a hindsight reconstruction of the claimed elements, and is impermissible basis for a §103 rejection.

Second, even if there would be motivation for such combination, which there is not, the basis for rejection is still in error as it states that Ashburn teaches processing the image data in a format that is compatible with existing imaging cameras. To Applicants' best knowledge, systems that include an image data processor which formats the image data for storage on the storage medium in an extensible and open data format do not exist today, let alone at the time of the application filing. Consequently, according to the Examiner's own analysis, Ashburn could only teach processing image data in a format for cameras existing at least at the time of the filing of the current application, and more appropriately at the time of the filing of the corresponding Ashburn application.

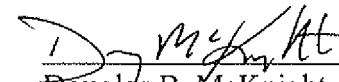
Third, Wang only teaches providing reports of radiological data in an XML format, not formatting the image data in an open and extensible format. Consequently, the improperly combined, misconstrued references would still not teach the claimed invention.

Based on the foregoing, the Examiner has failed to provide a *prima facie* case of obviousness and consequently the Applicants respectfully request reconsideration.

For the foregoing reasons, Applicants submit that this application is now in condition for allowance. The Examiner is encouraged to contact the undersigned if such contact would facilitate the prosecution of this application. Please charge any deficiency or credit any overpayment to our Deposit Account No. 14-1270.

Respectfully submitted,

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